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Jennifer J. Johnson
Secretary of the Board
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1384 – Proposed Rule Implementing Provisions of the CARD Act of 2009 effective August 22, 2010

Dear Ms. Johnson:

Citigroup, one of the largest U.S. financial services holding companies, respectfully submits these comments to the Federal Reserve Board (the "Board") in response to proposed amendments to the open-end credit rules of Regulation Z, 12 C.F.R. § 226, which implement provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "CARD Act"). The proposed rule was published in the Federal Register on March 15, 2010, 75 Fed. Reg. 12,334 (Mar. 15, 2010).

Citi appreciates the opportunity to provide the Board with comments on the proposed rule. We understand that the Board faced many challenges in drafting the proposal. However, while we support certain aspects of the proposal, we are very concerned about the aspects that go beyond what is required by the CARD Act and result in severe burdens on card issuers. As explained further below, these aspects of the proposal will have unintended consequences, such as forcing issuers to further limit the availability of credit, lower existing credit lines, and raise rates. The substantial harm to a great number of consumers caused by these consequences will likely far exceed the benefits that certain consumers might receive under the proposal.

Citi therefore urges the Board to change certain aspects of the proposal as set forth below to mitigate the potential unintended harm that the proposal may cause. For the Board's convenience, we begin our comments with §§ 226.52 and 59, and then address the remaining sections of proposal by the section order of the proposed rule.

§ 226.52 Limitations on Penalty Fees

Perhaps the most troublesome aspect of the proposal is that the Board did not appear to consider the penalty fee provisions in the overall context of Regulation Z or the current state of the industry. Contrary to the Board's understanding, Citi has historically used both rate increases and late fee income to mitigate losses that are likely to follow late payments. *See* 75 Fed. Reg. at 12,341. Citi understands that other issuers do so as well. The CARD Act and resulting amendments to Regulation Z severely limit issuers' ability to address risk by increasing rates on high risk consumers' outstanding balances. This proposal further hobbles risk management by blocking issuers' ability to address risk through penalty fees. Issuers will now have to consider higher upfront pricing for virtually all consumers, including those who will never violate terms. As drafted, the proposal is likely to impose a particularly harsh burden on consumers with spotty credit histories who are trying to control their credit costs by complying with account terms. Instead of being able to price consumers at the beginning of the relationship as if they will comply with account terms and using penalty fees to adjust pricing only on those who do not, issuers will be forced to price far more consumers, from the beginning, as if they were going to violate account terms.

Another concern is that the proposal will cause issuers to further shift the burden of loss recovery from transactors onto revolvers. If issuers are not able to mitigate losses by imposing reasonable penalty fees on all consumers who pay late, they will be forced to recover those losses by interest rate increases which only impact revolvers. Those revolvers will bear the higher costs regardless of whether they pay late.

To mitigate these problems, Citi urges the Board to make the following changes to proposed § 226.52 to allow issuers to better manage their risk and give consumers the opportunity to continue to receive favorable pricing.

§ 226.52(b)(1) General Rule

Inactivity fees are participation fees, not penalty fees, and should be removed from the examples of prohibited fees in § 226.52(b)(2)(i)(B)(2) and comment 52(b)-1.i.E. Inactivity fees should not be subject to the limitations and prohibitions on penalty fees in § 226.52(b) because they are not fees for violating account terms or other requirements imposed by the issuer. It is inherent to open-end credit that a cardholder may use the credit to a greater or lesser extent at will. We have never seen a card agreement that provides that a cardholder is in violation of the account terms if the cardholder fails to maintain a certain level of transaction activity. Thus, an inactivity fee is no more a penalty fee than a transaction fee for a cash advance is a penalty fee for taking a cash advance.

Rather than penalty fees, inactivity fees are a legitimate type of participation fee that covers the issuer's cost of maintaining an open line of credit for the benefit of the consumer. Issuers incur various types of expenses when maintaining an open line of credit. For example, any open credit account generates systems costs, capital costs associated with maintaining unused lines of credit, and compliance expenses. A participation fee is a legitimate way for an issuer to recover these expenses from a consumer who does not use the account but who nevertheless wants it to remain open for emergencies or other contingencies.

Even if these were considered to be "inactivity fees", the Board has recognized the legitimacy of inactivity fees in other contexts. For example, a credit card inactivity fee is substantially similar to a gift card inactivity fee—which the Board permits gift card issuers to charge. *See* §§ 205.20(a)(5) and 20(d). In accordance with that provision, an inactivity, dormancy, or service fee may be charged with respect to a gift card as long as appropriate disclosures are made. Credit card issuers should similarly be permitted to continue charging properly disclosed inactivity fees.

If these fees are prohibited, issuers may be required to curtail their expenses by closing accounts following even brief periods of inactivity. These closures will hurt consumers who would be willing to pay a fee to have access to credit, even if they are not using the credit every month. For example, some consumers like the security of having an open line of credit, even if they choose to pay cash on a regular basis. Other consumers may want to establish a separate line of credit and make it available to a family member for use in case of real need, which they hope is infrequent. For these and many other reasons, a consumer may be willing to pay to maintain a line of credit. Any consumer who does not want to pay an inactivity fee can—voluntarily and without penalty—close the account and avoid paying the fee. Moreover, under Regulation Z as recently revised, inactivity fees will be prominently disclosed. This transparency will drive market competition. If a customer does not want to pay an inactivity fee, the customer can look at what competitors are offering and select a card with no, or a lower, inactivity fee.

Even if the Board does not remove inactivity fees from the definition of penalty fee, it should clarify that an issuer may charge a membership fee, such as an annual fee, and later credit it back if the account meets certain criteria, such as making a specific dollar amount of purchases. In these circumstances, the membership fee is fully disclosed and is always charged to the account regardless of account activity. A subsequent credit for consumers who attain a prescribed level of account usage does not convert a properly disclosed membership fee into an inactivity fee. The credit is based on a minimum amount of account activity; it is not granted to active versus inactive accounts. The Board should not deprive consumers of the opportunity to reduce costs by receiving a fee credit based on account usage.

In response to the Board's request for comment, issuers should be able to incorporate all costs, including losses, in § 226.52(b)(1)(i) cost determinations. Section 149(c)(1) of the Truth in Lending Act ("TILA") as revised by the CARD Act, instructs the Board to consider "the cost incurred by the creditor from such omission or violation" in enacting rules under that section. Thus, issuers determining a reasonable and proportional penalty fee should be able to consider the full spectrum of costs incurred as a result of the violation. The standard definition of cost includes "loss; sacrifice; detriment." *Webster's New World Dictionary: 2nd College Edition* at 321 (David B. Guralnik ed., 2nd ed. 1982).[1] Consumers who do not pay their debts impose costs on

[1] "cost" n. 1. [the amount paid for a thing] 2.a) the amount of money, time, effort, etc. required to achieve an end b) loss; sacrifice; detriment.

issuers, both itemized costs (e.g., collection calls) as well as losses. Congress did not limit the term "cost" to exclude losses, and without such an express limitation, the word "cost" should be afforded its ordinary meaning. Comment 52(b)(1)(i)-2, which excludes losses and associated costs, therefore, should be deleted. It has the effect of severely understating the financial impact of late payments and returned payments, which is contrary to the words of the statute.

The Board cites the 2008 Argus study[2], which showed that "more than 93% of accounts that were over the credit limit or delinquent twice in a twelve-month period did not charge off during the subsequent twelve months," as evidence that most violations of account terms (such as failure to make payments when due) do not actually result in losses. 75 Fed. Reg. at 12,341, n.17. In saying this, the Board misses the point by failing to take into account that 7% of these accounts *did* charge off — a rate that is *more than double* the charge-off rate for consumers who did not have such violations. This illustrates the clear correlation in the credit card industry between risky behavior such as making late payments and ultimate charge-off of the account.

Our experience confirms this clear correlation between losses and late payments. After reviewing account histories, we have determined that accounts with a greater incidence of incurring late fees in a 12 month period show a significantly higher loss rate in the following 12 month period. This holds true across all FICO bands. Thus, even if the Board will not permit issuers to include all losses in the § 226.52(b)(1)(i) determination, it should allow some portion of these losses to be included. Citi proposes that at the very least issuers be permitted to include in their cost determinations the portion of losses attributable to accounts that pay at least one late fee during a specified period. For example, an issuer could determine that the total net credit loss for a 12 month period was 8%. Then the issuer could subtract the portion of those losses attributable to accounts that had not paid a late fee during the previous 12 month period, for example 4%. The remaining 4% would be the amount of losses to be recovered by penalty fees on accounts that paid late in that prior period. (The lag is necessary because losses lag missed payments.) The Board should permit issuers to include this loss calculation in the costs associated with the cost of late payments for the purposes of § 226.52(b)(1)(i) because these losses are material, quantifiable, narrowly defined, and closely tied to the account violation.

The Board expressed concern that if issuers were permitted to recover losses and associated costs through penalty fees rather than upfront rates, "transparency in credit card pricing would be reduced." 75 Fed Reg. at 12,342. Citi respectfully disagrees. The Board's recent revisions to Regulation Z ensure that consumers will receive information, both at the application and account-opening stages, in a tabular format that readily enables them to understand and compare both interest rates and fees. The penalty fees in particular could not be more transparent. Consumers are clearly told what fees they will

[2] Federal Reserve Board Docket No. R-1314: Exhibit 5, Table 1a to Comment from Oliver I. Ireland, Morrison Foerster LLP (August 7, 2008), which presented the results of an analysis conducted in 2008 by Argus Information & Advisory Services, LLC of historical data for consumer credit card accounts believed to represent approximately 70% of all outstanding consumer credit card balances.

be charged if they pay late or a payment is returned. Moreover, the CARD Act requirements that issuers mail statements at least 21 days before the due date and that the due date be the same date each month will make it less likely that consumers will inadvertently pay late. As the percentage of inadvertent late payers decreases, the percentage of late payers who ultimately default will likely increase.

The Board should clarify that an issuer can make separate cost determinations under § 226.52(b)(1)(i) for each portfolio. Citi requests that the Board clarify that issuers may calculate by portfolio the costs incurred as a result of violations of account terms. This is an appropriate way to comply with the statute and is necessary for fairness. For example, the servicing and other costs related to a late or returned payment may be materially higher for a given portfolio because that portfolio may receive earlier and more frequent collections contacts. An issuer should be permitted to make a separate cost determination for that portfolio, basing the fee on the costs associated with accounts in that portfolio, rather than shifting the costs to other portfolios.

In response to the Board's request for comment, comment 52(b)(1)(i)-4.i should be revised to address other costs issuers incur as a result of late payments. Section 226.52(b)(1)(i) directs the issuer to consider "the *total costs* incurred by the issuer as a result of that type of violation" (emphasis added). Comment 52(b)(1)(i)-4.i provides that such costs include the costs associated with collections calls and with establishing workout arrangements. Citi believes this comment should be expanded to clarify that costs include all collections expenses that are specifically associated with late payment and collection activities, such as the cost of selling bad debts. The comment should also clarify that the indirect operating expenses that can reasonably be attributed to late payment and collections activities, including a reasonable portion of corporate allocations, systems expense, risk department expense, and the like are costs for the purposes of § 226.52(b)(1)(i). Another category of costs that should be included in the comment is the opportunity cost associated with funding charged off balances in the period before they are charged off. Finally, the comment should reference credit losses, which is a major category of costs, as discussed above.

Comment 52(b)(1)(ii)-2, concerning the use of models to determine deterrence levels, is inconsistent with the CARD Act and should be deleted. The CARD Act expressly requires that the Board consider the potential deterrence effect of penalty fees. TILA § 149(c)(2). Proposed comment 52(b)(1)(ii)-2, however, imposes overly burdensome and unworkable requirements on issuers when determining the potential deterrence effect. The comment requires an issuer use a model to estimate that a lower fee amount "would result in a substantial increase in the frequency of that type of violation" and identify "a lower fee level above which additional fee increases have no marginal effect on the frequency of violations." This standard appears to require extensive and sophisticated testing. The vast majority of consumers pay on time, thus developing a data set of repeat late payment behavior at different fee levels would take quite some time to compile and analyze. In addition, under the rules as proposed, such testing would be impossible because issuers would be unable to test any fee higher than the amount permitted under the rule, *e.g.*, any fee higher than the minimum payment due. Moreover, regulatory compliance constraints on changes in fee amount, such as notice and opt out requirements, would effectively prevent issuers from conducting such tests. Thus, because it is unworkable, the standard imposed in comment 52(b)(1)(ii)-2 nullifies the deterrence provision of the CARD Act, and should be deleted.

The Board should clarify that issuers need not provide a right to opt out of any changes made as a result of either an initial determination or a reevaluation under the cost or deterrence estimates in § 226.52(b)(1)(i) or (b)(1)(ii). Under the CARD Act, by definition, any penalty fee imposed must be reasonable and proportional. In these circumstances, giving the right to opt out is inappropriate. If a consumer opts out, closing the account will not lower the issuer's costs associated with late or returned payments. Nor will closing the account deter the consumer from violating the account terms. A consumer has the same capacity to violate account terms when paying off an existing balance as when repaying new transactions. Thus, the Board should clarify that the right to opt-out does not extend to fee increases made as a result of either an initial determination or a reevaluation under § 226.52(b)(1)(i) or (b)(1)(ii).

In response to the Board's request for comment, the Board should add a provision to the general penalty fee rule in § 226.52(b)(1) to permit incremental or tiered penalty fees based on the consumer's conduct. Such a provision is specifically envisioned by the CARD Act which instructs the Board to consider "the conduct of the cardholder." TILA § 149(c)(3). Under the rule as proposed, if a consumer fails to make a payment the day after the payment is due, the consumer can be charged a late fee. However, the fee is the same whether the consumer is slightly or substantially delinquent. There is no incentive to promptly cure the delinquency other than to avoid becoming 60 days late and risk having the rate increased on existing balances after 45 days notice. If, instead, the issuer could charge an incremental fee every day or week that the payment is late or impose a tiered fee based on severity of the delinquency, the consumer would have a continuing incentive to make prompt payment. The Board should also clarify that charging a penalty fee in increments does not violate the prohibition in § 226.52(b)(2)(ii) on imposing more than one fee for violating the terms of the agreement.

With respect to both fee increments and tiers, the Board should clarify that the total amount of the fee based on costs or deterrence may be higher than the fee that would otherwise be imposed if a single penalty fee were charged. We cannot foresee a circumstance where an issuer would charge a fee in increments or tiers unless permitted to charge a higher total fee using one of these methods than it could charge for a single event.

§ 226.52(b)(2) Prohibited Fees

In response to the Board's request for comment, the prohibition on penalty fees that exceed the dollar amount of the violation, found in § 226.52(b)(2)(i)(A), should be removed because it is arbitrary, unnecessary, and inconsistent with the provisions on reasonable and proportional fees based on costs and deterrence. Calculating the appropriate penalty fee amount under § 226.52(b)(1) involves a determination that the fee is "reasonable and proportional to the omission or violation to which the fee or charge relates." This standard is required by the CARD Act. TILA §

149(b). Both the reasonable and proportional prongs are satisfied by the cost and deterrence tests under § 52(b)(1), and an additional test is inconsistent with the Act. Similarly, the safe harbor in § 52(b)(3) provides for a penalty fee amount which is "generally consistent with the requirements of § 226.52(b)(1)" and thus, by definition, that amount is also reasonable and proportional, 75 Fed Reg. at 12,346.

Using the example in proposed comment 52(b)(1)(i)-4.ii.A, if a consumer pays late, and thus imposes a $23 cost on an issuer, it is objectively *reasonable* to expect that consumer to pay that cost, rather than to expect other consumers who pay on time to subsidize this consumer's behavior in violation of the agreement. Moreover, the $23 is *proportional* to the violation because the $23 is the portion of the costs attributable to each late payment. The comparison to the minimum payment due is irrelevant because the costs of collection efforts are the same regardless of the amount due. If the issuer instead imposed a lesser fee, because the minimum payment due were $20, for example, the fee would be *dis*proportional and too small relative to the violation. Similarly, if the fee amount is set based on a determination of the appropriate amount necessary to deter violations, a lesser fee, by definition will be both *un*reasonable and *dis*proportional. We do not understand the Board's reasoning behind the inclusion of § 226.52(b)(2)(i)(A) because on its face it seems arbitrary. It should be eliminated.

If the Board retains § 226.52(b)(2)(i)(A), comments 52(b)(2)(i)-1 and 2 should be revised because the minimum payment due is not the appropriate dollar amount associated with the violation for either late payments or returned payments. The amount of money at risk because a consumer pays late is the total balance on the account. By making the minimum payment due, the consumer shows the issuer that the consumer intends to comply with all of the terms of the agreement. Conversely, not making this payment is a violation of the agreement that signals to the issuer that the entire account balance is now at risk of being unpaid. Thus, an amount based on the total account balance is the more appropriate number for the amount of the violation.

For returned payments, the minimum payment due bears no relation to the amount of the violation. The amount of a returned payment violation is more appropriately the amount of the payment that was returned. Once an issuer receives a payment, it typically credits the consumer's account for the amount of that payment. Where the credit is based on a payment that fails to clear, an artificial "open to buy" equal to the amount of the payment is created. The consumer may make purchases against that amount before the check is returned, causing the issuer to incur costs that have nothing to do with the minimum payment due. These costs are particularly burdensome in situations where a consumer pays off the outstanding balance with a payment that is later returned. In addition, consumers should be deterred from writing a check that they cannot cover. The Board's concern in the context of § 226.52(b)(2)(i)(A) that using this higher number would be "inconsistent with the intent of new TILA Section 149" (75 Fed. Reg. 12,344) is unfounded because the limitations on the fees set forth in §§ 226.52(b)(1) and 52(b)(3) will ensure that the fees are consistent with TILA §149.

The Board should revise comment 52(b)(2)(ii)-1.ii.B to clarify that if a payment is late when made, a subsequent return of that payment is a separate event meriting a separate fee. Comment 52(b)(2)(ii)-1.ii.B provides an example of a payment that is late and then is subsequently returned. The comment currently states that the issuer cannot impose two fees because the fees would be based on a single event. Citi believes that this conclusion is inaccurate, and the Board should revise the comment to clarify that if a payment is late when made and then subsequently returned, the late payment and returned payment are two separate events for the purposes of § 226.52(b)(2)(ii). Using the facts as set forth in the comment, the payment is late when made on March 27, thus the late payment is an event for which a late fee can be assessed. When that payment is returned two days later, that is and should be treated as a separate event because it is unrelated to the fact that the payment was late, and thus the issuer should be permitted to assess a returned payment fee. Issuers incur separate costs as a result of late payments and returned payments and should be permitted to collect fees to offset both sets of costs by imposing fees for both events. This circumstance is different from the example in comment 52(b)(2)(ii)-1.ii.A where the payment was not late when made but was deemed late because of the returned payment.

§ 226.52(b)(3) Safe Harbor

In response to the Board's request for comment, Citi supports the safe harbor approach in proposed § 226.52(c). Section 226.52(c), which is expressly authorized under TILA § 149(e), provides necessary certainty for issuers seeking to comply with these new requirements. While in some circumstances it may be important for issuers to do the determinations contemplated under § 226.52(b)(1), in many cases, the cost, time, and uncertainty involved will be so burdensome as to effectively preclude this option.

In response to the Board's request for comment regarding the appropriate dollar amount for the safe harbor in § 226.52(b)(3)(i), Citi makes reference to the Argus Data Study and Survey. See Federal Reserve Board Docket No. R-1384: Comment from Oliver I. Ireland, Morrison Foerster LLP (April 14, 2010), describing the 2010 Argus Data Study and Survey. The 2010 Argus study indicates that an average issuer who collects a $28.40 fee when a consumer pays late will typically cover costs specifically associated with collections, the proportional share of operating expenses, and the opportunity cost for the loss of the use of funds that were not repaid. This figure does not include any credit losses. The second approach in the Argus study shows that a late fee calculation that includes reversals and unrecovered fees results in a late fee of $32.45 for the average issuer. Furthermore, to have a deterrence effect on even a simple majority of consumers, the fee would need to be at least in the $30 range as well, as described in the consumer survey conducted by Argus.

In response to the Board's request for comment, the percentage for the second safe harbor prong to calculating a reasonable penalty fee, found in § 226.52(b)(3)(ii), should be at least 50%. For the second prong of § 226.52(b)(3) to have any meaning, the percentage should be at least 50% of the amount associated with the violation. Using the numbers provided by the Board in the Supplemental Information, if the safe harbor amount in the first prong were $20, the second prong would not be relevant unless the minimum payment amount were at least $400. A typical minimum payment is the greater of $20 or 2% of the account balance. Under such a formula, only an account with a balance of $20,500 or more would exceed this threshold, making the second prong inapplicable in the vast majority of cases. A 50% standard would be more appropriate. For example, if an account has a balance of $2,050, the required minimum payment would be $41 and 50% of that is $20.50. A late payment on an account with a balance in excess of $2,000 is a significant event, requiring actual deterrence, and involves more serious conduct by the consumer. The issuer, therefore, should be able to use the second prong to collect a higher late fee. Graduated fees based on the severity of the event are only possible, in practical terms, if the percentage is considerably higher than 5%.

In the alternative, the Board could retain the 5% in the second prong and redefine the amount associated with a late payment in comment 52(b)(3)-3.i as an amount based on the total unpaid balance on the account and the amount associated with a returned payment in comment 52(b)(3)-3.ii as the amount of the payment. As described in detail in connection with comments 52(b)(2)(i)-1 and 2 above, these amounts more accurately reflect the amounts associated with the violations than the minimum payment due.

In response to the Board's request for comment, the safe harbor amount for the total of any penalty fee charged in increments or tiers should be twice the safe harbor amount in § 226.52(b)(3)(i). As explained above, issuers should be permitted to charge fees in increments or tiers. With respect to both, the safe harbor amount for the total of all fee increments or tiers charged should be at least twice the safe harbor amount for a one-time penalty fee. The safe harbor amount in § 226.52(b)(3)(i) will presumably be based on the typical delinquency, after considering associated costs and deterrence. If a particular delinquency is extended or repeated, the costs are increased, and, as evidenced by the consumer's behavior, the initial fee was an inadequate deterrent. In such cases, the issuer should be permitted to charge a series of penalty fees, the total of which is up to a higher safe harbor amount, or a higher tier of fee, as warranted by the length of the violation.

The Board should clarify that a right to opt out is not required for an increase in a penalty fee based on an adjustment to the safe harbor amount made using the Consumer Price Index as set forth in comment 52(b)(3)-2. The Board would make these adjustments to keep pace with inflation. The dollar-denominated amount of the fee would be increased through a CPI adjustment, but the actual amount of the fee, as a reflection of costs and deterrence, would remain constant. Since the adjustment would not reflect a true fee increase, consumers should not have the right to opt out of the fee adjustment.

§ 226.59 Reevaluation of Rate Increases

In response to the Board's request for comment, issuers should have 60 days or 2 complete billing cycles, whichever is greater, to make any rate reductions required under § 226.59(a)(2). The proposed time period of 30 days in § 226.59(a)(2) is unworkable. Mid-cycle rate changes are extremely difficult and therefore costly. For some processing platforms, they are impossible. Yet the proposal would effectively require mid-cycle rate changes or give issuers fewer than 30 days to react in all but the most exceptional cases. Issuers would get the full 30 days only in the 5 months with 30 or fewer days, and, within that population, only for bill groups for which the determination was made on the first day of the billing cycle.

A standard which allows an issuer the greater of 60 days or 2 complete billing cycles would give issuers sufficient time to implement the changes, while giving consumers the benefit of the lower rates relatively quickly. This time period would allow issuers the time to identify the accounts and, as applicable, the balances on those accounts, subject to the rate reduction. It would also give issuers who want to notify the relevant consumers the time to do so. Although not required, issuers may want to inform consumers about the rate decrease and a 30 day time period would effectively prohibit them from doing so.

In response to the Board's request for comment on transition guidance, Citi requests that the Board exempt from the reevaluation requirements in § 226.59(a) rate increases that were implemented to comply with Regulation Z. For example, as the Board recognized in the transition guidance to the recent amendments to Regulation Z, certain issuers had to make changes to the method used to calculate a variable rate to comply with § 226.55(b)(2). 75 Fed. Reg. at 7,782. In some cases, the change could be deemed a rate increase. However, because the change was made to comply with the new regulatory requirements, reevaluating the increase in six months would serve no purpose. Thus, the Board should exempt these and similar rate changes from the reevaluation requirements of the proposed rule.

In response to the Board's request for comment, the Board does not need to provide additional guidance regarding "reasonable" policies and procedures to reevaluate rate increases under § 226.59(b). The concept of reasonable policies and procedures is well established in Regulation Z (*see e.g.,* § 226.5(b)(2)(ii)(A) requiring reasonable procedures to ensure that statements are mailed at least 21 days prior to the due date; § 226.11(c)(1) requiring reasonable policies and procedures to ensure estate administrators can determine the amount of and pay any outstanding balances in a timely manner; § 226.51(a)(1)(ii) requiring reasonable policies and procedures to consider a consumer's ability to pay). Issuers do not need additional guidance to develop such procedures and will do so based on their operations and circumstances.

Citi supports the description of permissible factors found in § 226.59(d) because it gives issuers the flexibility necessary to do workable and meaningful rate reevaluations. Citi strongly supports this section as proposed. Issuers should not be locked in to using factors to review rates that may no longer be relevant due to changes in underwriting standards, legal considerations, or technology. Moreover, tracking the factors used to raise rates may be difficult, particularly for acquired accounts or for accounts whose rates were raised prior to August 22, 2010. Finally, issuers would be subject to unnecessary liability; if they inadvertently use incorrect factors, the entire review would be invalid.

In response to the Board's request for comment, Citi requests that the Board revise comment 59(d)-1 to permit a period of 90 days to update factors. Comment 59(d)-1 permits an issuer who changes the factors it considers in determining applicable rates to consider the new factors in its next rate reevaluation or to use the factors it considered immediately prior to the change in factors for a "brief transition period." Citi requests that the Board provide a safe harbor transition period of 90 days. This time period will give issuers enough time to make appropriate changes to computer systems and to make other operational changes necessary to consider the new set of factors.

In response to the Board's request for comment, in § 226.59(f), the obligation to review a rate should end after two years. Citi strongly believes that requiring issuers to continue reviewing factors over an extended period of time will be overly burdensome relative to any benefit to consumers. Instead, Citi believes that the required review period should be no more than two years. In our experience, and particularly under the new payment allocation rules, new transactions typically will be repaid in two years. At any point in time, if the issuer does not reduce the rate commensurate with changes in market conditions or the consumer's risk profile, the consumer may seek a lower rate at another issuer and transfer any balances remaining at the higher rate to that new account. Thus, market competition will drive issuers to lower rates so that they do not lose customers.

In response to the Board's request for comment, the § 226.59(g) provision concerning acquired accounts will impose insurmountable burdens on issuers and should be deleted. As the Board recognized, § 226.59(g) is not required by the CARD Act. Imposing additional requirements to reevaluate the rates on acquired accounts will have the unintended consequence of chilling the market for portfolio acquisitions. Factors that affect portfolio pricing (*e.g.*, cost of funds, operating efficiency, risk management policies, marketing strategy, and terms of private label/affinity/co-brand agreements) vary significantly among issuers. A portfolio acquisition may be feasible for the buyer at rates currently reflected in the portfolio, but not at rates offered by the seller at some point in the past. Requiring the buyer to review and reduce rates based on the seller's prior management of the business could put the financial performance of the portfolio at risk. In addition, disclosure of the information necessary to enable a buyer's review of the seller's rate increases would require a seller, who is a competitor as well, to divulge competitive and proprietary information that ought not to be revealed, including risk management and decision management strategies.

The alternative of allowing the buyer to review the account at acquisition does not address the issue. The review could result in rate decreases after acquisition. The resultant revenue reduction would negatively affect the capacity of the portfolio to support acquisition related expenses, including any premium as part of the purchase price. Instead of adopting § 226.59(g), the Board should clarify that accounts acquired from an unaffiliated issuer may be treated like new accounts for the purposes of § 226.59, and thus rates do not need to be evaluated unless and until they are increased by the acquiring issuer.

If the Board retains § 226.59(g), it should retain § 226.59(g)(2). In doing so, it should clarify that minor adjustments made to an acquired account to conform to the issuer's systems and standard pricing, such as changing LIBOR to the U.S. Prime Rate or making minor adjustments to a margin to fit within one of the categories available at the acquirer, would not require the rate to be reevaluated within six months, even if the adjustment resulted in a minor rate increase. In addition, the Board should clarify that if an acquiring issuer has not been provided with information informing it that an account is at a penalty rate, it does not violate § 226.59(g)(2) if it does not reevaluate that rate after it initially determines the rate to be appropriate.

§ 226.5a Credit and Charge Card Applications and Solicitations
§ 226.6 Account-Opening Disclosures
§ 226.7 Periodic Statement

In response to the Board's request for comment, Citi supports the proposed changes to §§ 226.5a, 226.6, and 226.7 and the conforming changes to the Model Forms, but requests clarification that it is permissible to disclose a range for a penalty fee in the application and account opening tables. Citi supports the proposed changes to §§ 226.5a(a)(2)(iv) and 226.6(b)(1)(i) to require the use of bold text when disclosing maximum limits on fees. Citi also supports the proposed changes to § 226.7(b)(11)(i)(B) to permit disclosure of "up to" amounts. In addition, Citi supports the conforming changes to the Model Forms. We also appreciate the option to describe a range of fees as set forth in § 226.7(b)(11)(i)(B). However, Citi seeks clarification that disclosure of a range for a penalty fee is similarly permissible in the application and account opening tables under §§ 226.5a and 226.6.

Citi requests that the Board (1) delay the effective date of the formatting requirements for 9 months and (2) provide transitional guidance that overstatement of a fee amount is not a violation of the rule. The compressed time frame between proposal and statutory effective date poses challenges to the Board and industry alike. We are preparing to make the programming changes necessary to comply with any new limits on the penalty fee amounts, and hope that the Board will publish the new requirements at least 60 days before the effective date. We are also gearing up to make any necessary changes to customer communications that mention penalty fees (including applications, account opening documents, periodic statements, advertisements and other promotional offers, and customer service scripts). Such a far reaching revision process is painstaking and time consuming.

Accordingly, we request that the Board delay the effective date of the formatting provisions of the final rule for nine months from date of publication, and provide guidance that a disclosure which overstates the amount of a penalty fee does not violate the regulation. This transition guidance will reduce unnecessary burden and facilitate compliance, without harm to consumers. As the Board recognized in the Supplemental Information to the proposed rule, "a consumer who incorrectly assumes that [a higher] penalty fee will be imposed...will not be harmed if—when a violation actually occurs—a lower penalty fee is imposed." 75 Fed. Reg. at 12,353. The same reasoning applies to higher returned payment fees.

§ 226.9(c)(2) Change in Terms Affecting Open-End (Not Home-Secured) Plans
§ 226.9(g)(2) Increases in Rates Due to Delinquency or Default or as a Penalty

Citi supports the changes to §§ 226.9(c)(2) and 9(g)(2) and the proposed changes to Model Forms G-18(F), G-18(G), G-20, and G-22. Citi supports the proposed new §§ 226.9(c)(2)(iv)(A)(8) and (g)(3)(i)(A)(6) and believes they strike the correct balance, providing consumers with useful, but not too much, information, in a way that facilitates compliance and reduces unnecessary burden. Citi particularly supports the clarifications in comment 9(c)(2)(iv)-11 that an issuer may describe the reasons for an increase in general terms and that in some circumstances it may be appropriate for an issuer to combine the disclosure of several reasons in one statement.

Citi requests that the Board provide transitional guidance that the new requirements in §§ 226.9(c)(2)(iv)(A)(8) and (g)(3)(i)(A)(6) apply to notices sent on or after August 22, 2010. Citi urges the Board to provide transitional guidance similar to that in the Supplemental Information to the amendments to Regulation Z, published February 22, 2010. As set forth in that guidance, the relevant date for determining whether a change in terms notice must comply with the new requirements should be the "date on which the notice is provided, not the effective date of the change." 75 Fed. Reg. 7,658, 7,782, Feb. 22, 2010. This timing is particularly important with respect to this proposal given the brief time remaining before the statutory effective date. A final rule that imposes new requirements on notices sent prior to August 22, 2010, would, in all likelihood given the current stage of the regulatory process, impose requirements on notices that issuers drafted and mailed before the final rule was published.

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On behalf of Citigroup, I thank you again for this opportunity to comment on the Board's proposed rules implementing certain provisions of the CARD Act. If you have questions on any aspects of this letter, please call me at (212) 559-2938, Joyce ElKhateeb at (212) 559-9342, or Karla Bergeson at (718) 248-5712.

Sincerely,

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